

SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

**THE TRIAL CHAMBER**

**Case No:** STL-11-01/T/TC

**Before:** Judge David Re, Presiding  
Judge Janet Nosworthy  
Judge Micheline Braïdy  
Judge Walid Akoum, Alternate Judge  
Judge Nicola Lettieri, Alternate Judge

**Registrar:** Mr Daryl Mundis

**Date:** 5 October 2015

**Original language:** English

**Classification:** Public

**THE PROSECUTOR**  
v.  
**SALIM JAMIL AYYASH**  
**MUSTAFA AMINE BADREDDINE**  
**HASSAN HABIB MERHI**  
**HUSSEIN HASSAN ONEISSI**  
**ASSAD HASSAN SABRA**

**CORRECTED VERSION OF 'DECISION ON PROSECUTION MOTION FOR THE  
ADMISSION OF THE STATEMENTS OF WITNESSES PRH056 AND PRH087'  
OF 29 SEPTEMBER 2015**

**Office of the Prosecutor:**Mr Norman Farrell, Mr Graeme Cameron  
& Mr Alexander Hugh Milne**Counsel for Mr Salim Jamil Ayyash:**Mr Eugene O'Sullivan, Mr Emile Aoun &  
Mr Thomas Hannis**Victims' Legal Representatives:**Mr Peter Haynes, Mr Mohammad F. Mattar  
& Ms Nada Abdelsater-Abusamra**Counsel for Mr Mustafa Amine Badreddine:**Mr Antoine Korkmaz, Mr Iain Edwards &  
Ms Mylène Dimitri**Counsel for Mr Hassan Habib Merhi:**Mr Mohamed Aouini, Ms Dorothée Le Fraper  
du Hellen & Mr Jad Khalil**Counsel for Mr Hussein Hassan Oneissi:**Mr Vincent Courcelle-Labrousse, Mr Youssef  
Hassan & Mr Philippe Larochelle**Counsel for Mr Assad Hassan Sabra:**Mr David Young, Mr Guénaél Mettray &  
Mr Geoffrey Roberts

## **INTRODUCTION**

1. The Prosecution seeks to admit into evidence, under Rule 156 of the Special Tribunal's Rules of Procedure and Evidence, five statements by Witness PRH056 and two statements by Witness PRH087. As parts of their evidence go to the acts and conduct of the Accused as charged in the consolidated indictment, the Prosecution will be calling these witnesses to appear for cross-examination by counsel for the Accused and questioning by the Trial Chamber and the Legal Representatives of the Victims.<sup>1</sup> Counsel for the Accused, Mr Mustafa Amine Badreddine, Mr Hassan Habib Merhi, Mr Hussein Hassan Oneissi and Mr Assad Hassan Sabra, responded to the motion, and the Prosecution filed a reply.<sup>2</sup>

## **SUBMISSIONS**

### *Prosecution submissions*

2. The Prosecution submits that these statements are relevant to and probative of the disappearance of Mr Ahmad Abu Adass, who the Prosecution alleges made a false claim of responsibility for the assassination of former Lebanese Prime Minister, Mr Rafik Hariri, in Beirut on 14 February 2005.

3. These two witnesses knew Mr Abu Adass personally. Witness 087 describes Mr Abu Adass's demeanour and personal life. He also describes the time in 2005 he saw Mr Abu Adass at the Arab University Mosque apparently teaching a man to pray.

4. Witness 056 also describes Mr Abu Adass from her personal knowledge. Her statements describe telephone calls to Mr Abu Adass from a person she knew as Mohammed. The witnesses describe Mr Abu Adass's disappearance and give their opinion on his appearance in the video where he claimed responsibility for the attack.<sup>3</sup>

5. The Prosecution explains that parts of these statements concern the acts and conduct of the Accused, as it alleges that the man that Mr Abu Adass met at the mosque, Mohammed,

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<sup>1</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F2141, Prosecution Motion to Admit the Statements of PRH087 and PRH056, 27 August 2015, paras 1-2.

<sup>2</sup> F2187, Badreddine Defence Response to "Prosecution Motion to Admit the Statements of PRH087 and PRH056", 10 September 2015; F2188, Merhi Defence Response to "Prosecution Motion to Admit the Statements of PRH087 and PRH056", 10 September 2015; F2185, Response to "Prosecution Motion to Admit the Statements of PRH087 and PRH056", 10 September 2015; F2189, Sabra Defence Response to Prosecution Motion to Admit the Statements of PRH087 and PRH056, 10 September 2015; F2196, Prosecution Reply to Sabra Defence Response to Prosecution Motion to Admit the Statements of PRH087 and PRH056, 15 September 2015.

<sup>3</sup> Prosecution motion, paras 4-5.

was the Accused, Mr Oneissi, using a false identity.<sup>4</sup> If the Trial Chamber declares these statements admissible, the Prosecution will call the witnesses, have the witnesses confirm their statements and then read public summaries before a short examination in chief. This procedure will reduce the time needed to examine the witnesses and will promote efficient and expeditious proceedings.<sup>5</sup>

6. One statement of Witness 087, dated 14 January 2015, does not appear on the Prosecution's exhibit list filed under Rule 91. The statement incorporates a previous statement by Witness 087 to the United Nations International Independent Investigation Commission (UNIIC) dated 24 November 2006.<sup>6</sup> The Prosecution submits that, though their practice has been to seek leave to add new witness statements to its exhibit list when it seeks to admit those statements under Rule 155, it was under no legal obligation to do so. That a witness appears on its witness list is sufficient notice to the Defence that it intends to rely on that witness's evidence. New statements of that witness, such as those obtained by the Prosecution when preparing a witness for testimony, must only be disclosed to the Defence.<sup>7</sup>

#### *Defence submissions*

7. Counsel for Mr Badreddine and Mr Sabra disagree with admitting a statement not appearing on the Prosecution's exhibit list, submitting that this new practice is merely an attempt to circumvent the Rules—especially the requirement that a Party must show good cause in order to amend its exhibit list.<sup>8</sup> Counsel for Mr Merhi also oppose this procedure, arguing that the Prosecution is confusing its disclosure obligations with its obligation to put the Defence on notice of the evidence it will rely on at trial. Counsel argue that witnesses are distinct from their statements, and witness statements provide essential notice of the evidence the Prosecution will elicit from witnesses. Merely having a witness on the witness list is not sufficient notification of what the Prosecution will rely on.<sup>9</sup>

8. Counsel for Mr Oneissi submit that the Trial Chamber has no basis to admit the statements. Without the witnesses appearing in court and stating that their statements accurately reflect what they would say if questioned, the statements are not yet admissible under Rule 156. They also oppose the Prosecution's proposal to read summaries of the

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<sup>4</sup> Prosecution motion, para. 7; F1444, Redacted Version of the Consolidated Indictment, 7 March 2014, para. 23.

<sup>5</sup> Prosecution motion, paras 2-3.

<sup>6</sup> Document ERN 60012423-60012434.

<sup>7</sup> Prosecution motion, paras 10-12; Sabra response, para. 15.

<sup>8</sup> Badreddine response, para. 3.

<sup>9</sup> Merhi response, paras 2-6.

witnesses' testimony, since the summary will likely present the evidence in the manner most favourable to the Prosecution's case, breaching the principle of adversarial proceedings.<sup>10</sup>

9. Counsel for Mr Sabra also oppose the use of Rule 156, submitting that this procedure, contrary to the Prosecution's submissions, will not reduce the time needed for examination-in-chief and therefore not facilitate efficient and expeditious proceedings, especially because Witness 056 will have to explain the inconsistencies in her statements. Having the witnesses testify, instead of admitting their statements, would therefore be of more assistance to the Trial Chamber.<sup>11</sup>

10. Alternatively, counsel requests the Trial Chamber to admit all the witnesses' statements, rather than just those selected by the Prosecution. This will assist the Trial Chamber by providing context, identifying inconsistencies and assessing the witnesses' credibility.<sup>12</sup>

11. In reply, the Prosecution opposed this submission, arguing that the decision of the Trial Chamber counsel for Mr Sabra relied on is inapplicable. Moreover, they had not demonstrated the relevance of the additional statements.<sup>13</sup>

## **DISCUSSION**

### *Whether the statements are admissible*

12. Rule 156 provides that:

[s]ubject to Rule 158, the Trial Chamber may admit the evidence of a witness in the form of a written statement or a transcript of evidence given by a witness in proceedings before the Tribunal that goes to proof of acts and conduct of the accused as charged in the indictment, only if the following conditions are satisfied:

- (i) the witness is present in court;
- (ii) the witness is available for cross-examination and any questioning by the Judges; and
- (iii) the witness attests that the written statement or transcript accurately reflects that witness's declaration and what the witness would say if examined.

13. In addition to these procedural requirements, the statements must be *prima facie* relevant and probative under Rule 149 (C), and, if their probative value is substantially

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<sup>10</sup> Oneissi response, paras 5-9.

<sup>11</sup> Sabra response, paras 6-11.

<sup>12</sup> Sabra response, paras 12-14.

<sup>13</sup> Prosecution reply, paras 2-6.

outweighed by the need to ensure a fair trial, the Trial Chamber may exclude them under Rule 149 (D).

14. The statements submitted by the Prosecution are relevant to and probative of the disappearance of Mr Abu Adass and his video-taped claim of responsibility. Because the witnesses will be subject to cross-examination, inconsistencies in their statements will not prevent their admission into evidence under Rule 156.

15. Contrary to the submissions of counsel for Mr Oneissi, the Trial Chamber is not admitting the statements into evidence in this decision. The statements cannot be admitted into evidence until the formal requirements of Rule 156 are met—namely, that the witness appears in court to be subject to cross-examination and questioning, and attests that their statements accurately reflect their declaration and ‘what the witness would say if examined’. However, the Trial Chamber can assess the relevance and probative value of the statements in advance, as well as deal with objections. There is no fault with the Prosecution’s motion in this regard.

16. Additionally, counsel’s objection to the Prosecution’s public summary of the witnesses’ evidence is misplaced. Reading a public summary of an admitted statement is a normal procedure in international criminal tribunals.<sup>14</sup> The summary merely preserves the well-established principle of transparency by allowing the public to follow the proceedings and the evidence. The practice of reading public summaries of evidence has been used for all witness statements admitted under Rule 155, and the Trial Chamber approves of this practice.

17. However, the Trial Chamber would be assisted by hearing the witnesses’ evidence on their direct observations of and interactions with Mohammed, who the Prosecution alleges is the Accused, Mr Oneissi. The witnesses’ statements are therefore admissible, with the exception of those portions.

*Whether Witness 087’s statement of 14 January 2015 must be added to the Prosecution’s exhibit list*

18. The Trial Chamber considers that witness statements do not have to be on a Party’s exhibit list in order to be admitted into evidence under Rules 155, 156 or 158. In addition, the

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<sup>14</sup> This practice was used extensively at the International Criminal Tribunal for the former Yugoslavia in, for example, *Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić & Berislav Pušić*, IT-04-74.

witness statement incorporates a previous statement given to the UNIIC on 24 November 2006 and does not add any substantive evidence. The previous version appears on the Prosecution's exhibit list.<sup>15</sup>

*Whether the Trial Chamber should admit the Witnesses' other statements*

19. Contrary to counsel for Mr Sabra's request, admission of all of the statements of these witnesses is unnecessary. Counsel for Mr Sabra cited a decision under Rule 158 dated 27 March 2015. There, the Trial Chamber found the witness to be unavailable and, therefore, not subject to cross-examination. Having all of the witness's statements, therefore, assists the Trial Chamber and the Parties.<sup>16</sup>

20. Counsel failed to cite a more applicable decision about admission of all of a witness's statements under Rule 155. On 14 May 2015, the Trial Chamber declined counsel for Mr Sabra's request to admit all of the statements of Witness PRH115. The Trial Chamber required the Prosecution to make the witness available for cross-examination. Counsel, therefore, could put relevant parts of any other statements to the Witness and seek their admission.<sup>17</sup> Witnesses 056 and 087 will be appearing for cross-examination. No decision is therefore necessary on counsel for Mr Sabra's request to admit their other statements.

**DISPOSITION**

**FOR THESE REASONS**, the Trial Chamber:

**DECLARES** admissible under Rule 156 the five statements by Witness PRH056 and the two statements by Witness PRH087 listed in Annex A to the motion, with the exception of the parts of the statements concerning direct observations of and interactions with the person described as Mohammed; and

**DECIDES** that it will, at a suitable stage in the proceedings, admit the statements into evidence.

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<sup>15</sup> The statement appears on the Prosecution's exhibit list as R91-100277.

<sup>16</sup> F1890, Decision on Prosecution Motion to Admit the Statements of Witnesses PRH402 and PRH636, 27 March 2015, para. 26.

<sup>17</sup> F1949, Decision on Prosecution Motion to Admit the Statements of Witnesses PRH007, PRH115, PRH396 and PRH661, 14 May 2015, para. 17.

Done in Arabic, English, and French, the English version being authoritative.

Leidschendam,  
The Netherlands

5 October 2015

*David Re*

Judge David Re, Presiding

*Janet Nosworthy*

Judge Janet Nosworthy

*Micheline Braidy*

Judge Micheline Braidy

